

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GREAT AMERICAN INSURANCE
COMPANY, an Ohio corporation,

Plaintiff,

vs.

RODGER MAY, an individual;
MK SALVAGE VENTURE LLC; a
Washington limited liability company; BEAR
ENTERPRISES LLC, a Washington limited
liability company, and PETER KUTTEL, an
individual,

Defendants.

NO. _____

PLAINTIFF GREAT AMERICAN
INSURANCE COMPANY'S
COMPLAINT FOR DECLARATORY
JUDGMENT

Plaintiff Great American Insurance Company ("Great American") states as follows:

I. PARTIES

1.1. Great American is a foreign corporation, incorporated under the laws of the state of Ohio and with its primary place of business in Cincinnati, Ohio.

1.2. Defendant Rodger May ("May") is believed to be an individual residing in King County, Washington at all material times.

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1.3. Defendant MK Salvage Venture LLC (“MK Salvage”) is believed to have been a Washington limited liability company headquartered and doing business in King County, Washington, which was formed in 2012 and dissolved by the Washington State Secretary of State on or about April 30, 2021. All members of MK Salvage were, at all material times, either residents of Washington or formed, headquartered and doing business in Washington.

1.4. Defendant Bear Enterprises, LLC (“Bear”) is a Washington limited liability company headquartered and doing business in King County, Washington. All members of Bear were, at all material times, residents of Washington.

1.5. Defendant Peter Kuttel (“Kuttel”) is an individual residing in King County, Washington.

II. JURISDICTION AND VENUE

2.1. This Court has jurisdiction over defendants in this action because defendants May, MK Salvage, Bear Enterprises and Kuttel are and were, at all material times, residents of or doing business in King County, Washington.

2.2. This Court has subject matter jurisdiction over this case, because plaintiff and defendants are citizens of different states, and because plaintiff seeks relief the Court is statutorily empowered to grant.

2.3. This Court is the proper venue for this action because at least some of the events leading up to this action occurred in King County, Washington, and the related lawsuit *Rodger May v. MK Salvage Venture LLC, Bear Enterprises, LLC and Peter Kuttel*, King County Superior Court, No. 19-2-10613-1 (the “underlying action”) is pending in King County Superior Court.

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III. FACTS

3.1. Great American insured some of the defendants under certain policies of insurance. These policies included the following, identified by their numbers and effective periods:

POLICY NUMBER	EFFECTIVE DATES
OMH 3133724 04	9/28/2015-9/28/2016
OMH 3133724 05	9/28/2016-9/28/2017
OMH 3133724 06	9/28/2017-9/28/2018

These policies will be referred to herein as the “Policies.” A fourth policy, number OMH 3133724 07, was issued, but cancelled on its effective date.

3.2. Bear and MK Salvage were named insureds on the Policies. Kuttel qualifies as an insured under the Policies because he was a managing member of Bear during effective periods of the Policies. Kuttel was also a member of MK Salvage.

3.3. On or about April 18, 2019, defendant May filed his complaint against Bear, MK Salvage, and Kuttel in the underlying action.

3.4. On or about August 23, 2019, MK Salvage filed an answer and counterclaim to May’s complaint in the underlying action.

3.5. On or about August 23, 2019, Bear filed an answer and counterclaim to May’s complaint in the underlying action.

3.6. On or about August 23, 2019, Kuttel filed an answer and counterclaim to May’s complaint in the underlying action.

3.7. On or about October 11, 2019, Bear’s insurance broker tendered the underlying action to Great American. True and correct copies of the underlying action pleadings sent to Great American are attached hereto as Exhibit A.

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3.8. On or about November 14, 2019, Great American advised Kuttel that the tender of the underlying action was denied, for all insureds, explaining its decision in a letter. A true and correct copy of the letter is attached hereto as Exhibit B.

3.9. The closing sentence of Great American's letter (Exhibit B) states: "If you disagree with this determination, please provide me with your written response explaining your position."

3.10. At the time that the letter was sent, Bear, MK Salvage, and Kuttel were all represented by counsel in the underlying action.

3.11. None of the three insureds – Bear, MK Salvage, or Kuttel – disputed Great American's declination of coverage.

3.12. On or about April 8, 2021, the parties to the underlying action filed a Joint Motion for Determination of Reasonableness of Covenant Judgment Settlement ("Reasonableness Motion"). The parties noted the matter for hearing on May 21, 2021. A copy of an Amended and Restated Settlement Agreement ("Agreement"), signed by all parties on December 11, 2020, was attached as Attachment 1 to the Reasonableness Motion. Among other terms, the Agreement provides that MK Salvage, Bear and Kuttel would all assign their rights against Great American to May.

3.13. Counsel for May sent copies of the Reasonableness Motion and associated pleadings to Great American via letter dated April 8, 2021. This letter and its attachments were received by Great American on April 13, 2021.

3.14. Counsel for May also caused the Reasonableness Motion and associated pleadings to be served upon the Office of the Insurance Commissioner of the State of Washington on April 13, 2021. This copy was sent to Great American by the Office of the Insurance Commissioner.

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IV. CAUSE OF ACTION

4.1. The Policies do not provide any coverage for the claims brought by May against MK Salvage, Bear and Kuttel.

4.2. Great American is entitled to a declaratory judgment pursuant to 28 USC § 2201 and RCW chapter 7.24 that the Policies do not provide any coverage for the claims brought by May against MK Salvage, Bear and Kuttel.

V. PRAYER FOR RELIEF

Therefore, Great American Insurance Company requests judgment in its favor:

1. Declaring that the Policies do not provide any coverage for MK Salvage, Bear and Kuttel for the claims brought by May in the underlying action;
2. Awarding it costs and expenses incurred in this suit; and
3. Granting such other and further relief as may be appropriate.

DATED this 27th day of July, 2021.

BETTS, PATTERSON & MINES, P.S.

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By /s Kara A. Tredway
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